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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/604,297

07/09/2003

Gregg A. VanDusseldorp

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EXAMINER

LANG, AMY T

ART UNIT

PAPER NUMBER

3731

NOTIFICATION DATE

DELIVERY MODE

05/14/2008

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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<b>Office Action Summary</b>	<b>Application No.</b> 10/604,297	<b>Applicant(s)</b> VANDUSSELDORP, GREGG A.	
	<b>Examiner</b> AMY T. LANG	<b>Art Unit</b> 3731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 16 January 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,5-11,13 and 16-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 5-11, 13, and 16-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### DETAILED ACTION

Claims 1, 5-11, 13, and 16-20 are pending and claims 2-4, 12, 14 and 15 are cancelled.

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. **Claims 1 and 8-10** are rejected under 35 U.S.C. 103(a) as being unpatentable over Bilitz et al. (US 5,817,104) in view of Bates et al. (US 6,183,482 B1).

With regard to **claim 1**, Bilitz et al. (hereinafter Bilitz) discloses a surgical device for removing foreign objects from a patient comprising a sheath (60) and a distal basket (70) initially disposed within an interior passage of the sheath (Figure 3A). As shown in Figure 3B, the basket legs (66) are distally connected at tip (68). An actuating means is comprised of thumb slide (18), central control wire (72), and piston (20). When the

actuating means is retracted proximally, the legs of the basket are deployed from the sheath and move outwardly away from each other (column 6, line 58 through column 7, line 22). Moving the actuating means distally forward causes the basket legs to retract into the sheath (column 7, lines 16-22). Since the actuating means is the only mechanism to expand the basket legs, no other components are disclosed to force the basket legs into an expanded configuration.

However, Bilitz does not specifically disclose the transverse cross-section of each basket leg as having oppositely disposed concave and convex surfaces.

Bates et al. (hereinafter Bates) also discloses a surgical device to remove foreign objects from a patient. As shown in Figure 1, the device comprises a distal basket (10), sheath (40), and actuating means (12). Bates teaches that basket legs having a rounded circular cross-sectional shape advantageously reduce tissue trauma (column 1, lines 57-61). The crescent shape shown in Figure 8E is disclosed as enhancing capture of foreign objects while reducing trauma (column 5, lines 43-52). As shown in Figure 8E, each basket leg comprises a transverse cross-section defined by a radially inward first concave surface and an oppositely disposed radially outward convex surface. Therefore, the basket legs together would define a circular tubular shape having a circular opening and a circular exterior.

Since Bates discloses advantageous basket legs it would have been obvious to one of ordinary skill at the time of the invention for the basket legs of Bilitz to also utilize crescent shape basket legs. Therefore, the basket would define a circular tubular opening. A portion of the actuating means of Bilitz, control wire (72), would then reside

within this circular opening so that the basket legs surround this distal portion of the actuating means (Figure 3A).

With regard to **claims 8 and 9**, Figure 3A of Bilitz discloses a basket having 2 basket legs and Figure 1 disclose a basket having 4 basket legs.

With regard to **claim 10**, the device of Bilitz in view of Bates is capable of performing the instantly claimed procedures.

4. **Claims 5-7, 11, 13, and 16-20** are rejected under 35 U.S.C. 103(a) as being unpatentable over Bilitz et al. (US 5,817,104) in view of Bates et al. (US 6,183,482 B1) and Grayhack et al. (US 4,611,594).

Bilitz et al. (hereinafter Bilitz) in view of Bates et al. (hereinafter Bates) discloses the invention substantially as claimed. Bilitz discloses a surgical device comprising a basket that is retracted within a sheath. Bates teaches it is advantageous for basket legs to comprise a rounded configuration to reduce tissue trauma. Bates is further open to any rounded shape of basket legs (column 5, lines 33-39) but does not specifically disclose a rounded shape wherein the concave and convex surfaces have the same radius of curvature to produce a constant thickness.

Grayhack et al. (hereinafter Grayhack) also discloses a surgical device to remove foreign objects from a patient. As shown in Figure 9, a distal portion of the device (20) comprises legs with a transverse cross-section forming a concave and convex surface. The two surfaces each have a constant radius of curvature to produce a constant thickness and oppositely disposed lateral surfaces.

Since Bates is open to the rounded basket leg shape and Grayhack teaches a rounded shape that is utilized to remove foreign objects from a patient, it would have been obvious for the device of Blitz in view of Bates to comprise basket legs having the shape disclosed by Grayhack.

### ***Response to Arguments***

5. Applicant's arguments filed 01/16/2008 with respect to McGirr have been fully considered but they are not persuasive. Although the arguments are not persuasive, the rejection of McGirr has been withdrawn since McGirr does not disclose the basket as retracted within a sheath.

6. Applicant's arguments filed 01/16/2008 with respect to Blitz in view of Bates have been fully considered but they are not persuasive. Applicant argues that it is not obvious to modify Blitz with Bates since Bates provides a different reason for combining than the instant application. Specifically, Bates teaches a crescent shape for improving the basket holding ability while the instant application teaches a concave/convex shape so that the legs move automatically outward when in a deployed position without the assistance of a second component. However, as discussed above, the basket legs of Blitz automatically move outward when in a deployed position. Additionally, the crescent shape of Bates overlaps the instantly claimed concave/convex cross-sectional shape. Therefore, Blitz in view of Bates overlaps the scope of the instant claims even though a different motivation is provided. However, the fact that the applicant has

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recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amy Lang whose telephone number is (571) 272-9057. The examiner can normally be reached on Monday - Friday, 8:30 a.m. - 5:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Todd Manahan can be reached on 571-272-4713. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

04/28/2008  
/Amy T Lang/  
Examiner, Art Unit 3731

/Todd E Manahan/  
Supervisory Patent Examiner, Art Unit 3731